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SUMMIT ENTERTAINMENT, LLC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SUMMIT ENTERTAINMENT, LLC,
a Delaware limited liability company,

Plaintiff,

v.

BECKETT MEDIA, LLC., a Delaware
Corporation, CURTIS CIRCULATION
COMPANY, LLC, a Delaware limited
liability company, UBIQUITY
DISTRIBUTORS, INC., a New York
Corporation, and Does 1-10, inclusive,

Defendants.

Case No. CV09-8161 PSG (MANx)

~~[PROPOSED]~~ SECOND AMENDED
COMPLAINT FOR FALSE
DESIGNATION OF ORIGIN,
TRADEMARK INFRINGEMENT,
TRADEMARK DILUTION,
COPYRIGHT INFRINGEMENT,
UNFAIR COMPETITION, AND
BREACH OF CONTRACT

(Demand For Jury Trial)

Plaintiff Summit Entertainment, LLC ("Summit"), for its second amended complaint against defendant Beckett Media, LLC ("Beckett"), Curtis Circulation Company, LLC ("Curtis"), Ubiquity Distributors, Inc. ("Ubiquity") (collectively, "Defendants") and Does 1-10, alleges as follows:

JURISDICTION

1. This action arises under the trademark and anti-dilution laws of the United States, 15 U.S.C. § 1125, *et seq.*; the Copyright Act of 1976, as amended,

1 17 U.S.C. § 101, *et seq.*; and under the statutory and common law of unfair
2 competition. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and
3 (b), and § 1367, 15 U.S.C. § 1121, 17 U.S.C. § 501. This action arises under the
4 laws of the United States.

5 2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) in this case
6 because Summit resides in this District, and on information and belief, Defendants
7 are subject to personal jurisdiction in this District, and a substantial part of the
8 events or omissions giving rise to Summit's claims occurred in this District.

9 **PARTIES**

10 3. Summit is a Delaware limited liability company having its principal
11 place of business in Santa Monica, California.

12 4. On information and belief, Beckett is a Delaware corporation having its
13 principal place of business in Anaheim, California.

14 5. On information and belief, Curtis is a Delaware limited liability
15 company having its principal place of business in New Milford, New Jersey.

16 6. On information and belief, Ubiquity is a New York corporation having
17 its principal place of business in Brooklyn, New York.

18 **FACTS**

19 **Summit's Business, Trademarks, and Copyrights**

20 7. Since 1991, Summit and its predecessors have been an active
21 participant in the motion picture industry. Summit finances, produces and
22 distributes films and related entertainment products.

23 8. Summit has also been involved in licensing trademarks associated with
24 the motion pictures that it produces and distributes for merchandise sales.

25 9. Summit produced and distributes the movie *Twilight*, the extremely
26 successful and popular film about a teenage girl, Isabella ("Bella") Swan, who falls
27 in love with a vampire, Edward Cullen. Bella's other suitor in the film is Jacob
28 Black, a werewolf. The film was released in the United States on November 21,

1 2008, and was promoted for many months prior to its release. Summit released the
2 second motion picture in the *Twilight* series, *The Twilight Saga: New Moon* (“*New*
3 *Moon*”), in the United States on November 20, 2009.

4 10. Summit is the owner of the trademark TWILIGHT in block letters, and
5 in a distinctive stylized font (the “stylized TWILIGHT mark”) (collectively “the
6 TWILIGHT Marks”) and owns the trademark NEW MOON. Summit owns
7 36 pending federal trademark applications to register the TWILIGHT Marks and
8 19 pending federal trademark applications to register the NEW MOON trademark
9 for use on various types of goods and services.

10 11. Summit has licensed the TWILIGHT Marks and the NEW MOON
11 mark to third parties to sell a wide variety of products, including posters, clothing,
12 trading cards and beverage ware. Summit’s licensees first sold posters bearing the
13 TWILIGHT Marks in May of 2008, and continue to sell such products.

14 12. Summit is the copyright owner of both the screenplay and the motion
15 pictures *Twilight* and *New Moon* (the “*Twilight* Motion Pictures”), as well as all
16 publicity, promotional, unit, and special shoot photography related thereto and the
17 trailers for the *Twilight* Motion Pictures. Summit has licensed its copyrighted
18 photographs to third parties to promote the *Twilight* Motion Pictures, as well as for
19 various items of merchandise related to the *Twilight* Motion Pictures and bearing
20 the TWILIGHT Marks and the NEW MOON mark.

21 **Defendants and Their Infringing Actions**

22 13. On information and belief, Beckett is a publisher of sports and
23 entertainment collectibles and memorabilia magazines.

24 14. On information and belief, Beckett distributes its magazines widely in
25 various outlets throughout the United States including corner newsstands,
26 bookstores, grocery stores, drugstores, and other similar retail outlets. In addition,
27 Beckett operates a website at <www.beckett.com> and sells its magazines from that
28 website as well.

15. In late August 2009, Summit learned that Beckett was and is selling an 80-page fan magazine entitled *Twilight* (the “first Twilight Fanzine”) devoted entirely to stories and articles about the *Twilight* Motion Pictures and the characters and actors from those motion pictures, as well as advertisements for *Twilight* trading cards, dolls and other collectibles. Included in this first Twilight Fanzine are more than 30 unauthorized and unlicensed reproductions of photographs from the *Twilight* Motion Pictures and photographs and artwork produced for promotion of the *Twilight* Motion Pictures (collectively, along with the photographs and artwork described in paragraphs 17 and 23 below, the “Photographs”). Included in the center of the magazine is a removable, approximately 14 x 20½ inch poster, that is an unauthorized and unlicensed reproduction of Summit’s promotional photograph and artwork for the *Twilight* sequel, *New Moon* (“Poster Image I”). Appearing in large print as the title on the cover of the first Twilight Fanzine is the TWILIGHT trademark in the same or confusingly similar font as the stylized TWILIGHT mark used by Summit for the *Twilight* Motion Pictures. Beckett has been selling this stand alone Twilight Fanzine for \$9.99 per copy. A true and correct copy of the first Twilight Fanzine is attached hereto as **Exhibit A**.

16. The distinctive font of the stylized TWILIGHT mark is shown below on the left. For comparison, Beckett's infringing use appears on the right.

Summit's Stylized Mark

Beckett's Infringing Use

twilight

twilight

17. On September 1, 2009, Summit sent Beckett a letter demanding that Beckett cease and desist its trademark and copyright infringement. A true and correct copy of Summit's demand letter to Beckett is attached hereto as **Exhibit B**. Beckett failed to respond to Summit's initial letter, and Summit was forced to send a follow-up demand letter on September 17, 2009. A true and correct copy of Summit's second demand letter to Beckett is attached hereto as **Exhibit C**.

1 18. On September 22, 2009, Brown Law, LLP in Raleigh, North Carolina,
2 acting on behalf of Beckett, contacted Summit's counsel seeking more time for
3 Beckett to respond to Summit's demand letters, stating that they had just received
4 copies of the demand letters the previous day and had not yet seen a copy of the
5 first Twilight Fanzine. Summit's counsel asked that Beckett's counsel obtain a
6 copy of the first Twilight Fanzine and call the following day to discuss the matter,
7 because Summit urgently needed Beckett to cease producing and selling the first
8 Twilight Fanzine given the large amount of infringing material in it. Beckett did
9 not respond.

10 19. On September 29, 2009, Leopold, Petrich & Smith, in Beverly Hills,
11 California, new counsel for Beckett, contacted Summit's counsel, again seeking an
12 extension of time for Beckett to respond to Summit's demand letters, stating that
13 they had just received the matter, had not seen a copy of the first Twilight Fanzine,
14 and counsel was leaving the country until Sunday, October 4, 2009. Summit's
15 counsel conveyed to Beckett's counsel the urgency of Summit's need to have
16 Beckett cease producing and selling the first Twilight Fanzine and agreed to an
17 extension only until Monday, October 5, 2009.

18 20. On October 2, 2009, Summit discovered that Beckett had published
19 and was selling a second 80-page Twilight Fanzine, also for \$9.99 per copy (the
20 "second Twilight Fanzine," with the first Twilight Fanzine collectively "the
21 Twilight Fanzines"). Like the first Twilight Fanzine, the second Twilight Fanzine
22 is filled with more than 20 unauthorized and unlicensed reproductions of
23 photographs from the *Twilight* Motion Pictures and photographs and artwork
24 produced for promotion of those films (also part of the "Photographs"). Similar to
25 the first Twilight Fanzine, the second Twilight Fanzine includes in the center of the
26 magazine a removable, approximately 14 x 20½ inch, poster that is an unauthorized
27 and unlicensed reproduction of a photograph from *New Moon* ("Poster Image II,"
28 with Poster Image I and Poster Image II, collectively, the "Poster Images"). The

1 second Twilight Fanzine also bears as the title in large print on the cover the
2 TWILIGHT trademark in the same or confusingly similar font as the stylized
3 TWILIGHT mark used by Summit for the *Twilight* Motion Pictures. A true and
4 correct copy of the second Twilight Fanzine is attached hereto as **Exhibit D**.

5 21. On October 5, 2009, Beckett's counsel represented that the first
6 Twilight Fanzine was authorized based on Beckett's access to Summit's publicity
7 website at www.summitpublicity.com (the "Website"). The Website contains,
8 among other things, downloadable copyrighted photographs and other artwork from
9 or related to the *Twilight* Motion Pictures of which Summit is the copyright owner
10 (the "Content"). The Website and the Content thereon are intended for use only by
11 legitimate journalists who are reviewing or commenting on Summit's films. The
12 Terms of Use of the Website specifically state that the Content from the Website
13 may be used "only for journalistic purposes in connection with and/or related to
14 motion pictures and other entertainment programming distributed by Summit." The
15 Terms of Use do not include permission to allow third parties to merchandise the
16 *Twilight* Motion Pictures, as Defendant has done and continues to do.

17 22. Beckett requested a password and permission to use the Website for
18 "newsstand magazine coverage." Beckett was granted a password and permission
19 based on that request and under the Terms of Use for the Website, to which Beckett
20 expressly agreed when it signed on to the Website for the first time. The Terms of
21 Use grant the right to use Content from the Website solely "for journalistic
22 purposes" in connection with an article reviewing or commenting on Summit's
23 motion picture(s). Paragraph 2 of the Terms of Use for the Website states: "you
24 agree that: (a) you will not edit, alter or modify any of the Content without
25 Summit's prior written approval; . . . and (d) you will not use the Content or the
26 names, images, likeness or biographical images of the performers in the Program in
27 any manner which could constitute an express, direct or indirect tie-in or
28 endorsement of any product, service, sponsor or of your media outlet." The Terms

1 of Use also provide: "Unauthorized use [of] the Content may be a violation of law
2 which may result in civil and criminal liability. Summit has the right to enforce its
3 intellectual property rights to the fullest extent of the law." Paragraph 12 of the
4 Terms of Use for the Website provides: "You agree that a breach by you of any of
5 your undertakings under these Terms would cause Summit damage which could not
6 readily be remedied by an action at law and might, in addition, constitute an
7 infringement of copyright and/or trademark and/or other applicable laws, and/or a
8 violation of moral rights (where applicable). Any such breach would, therefore,
9 entitle Summit to equitable remedies, costs and attorneys' fees in addition to any
10 other rights and remedies provided herein or by law." A true and correct copy of
11 the Terms of Use for the Website is hereto as **Exhibit E**.

12 23. Beckett's use of Summit's copyrighted material and trademarks is not
13 for a journalistic purpose. Even if it had some modicum of journalistic purpose,
14 Beckett's use goes far beyond a journalistic use and therefore exceeds the scope of
15 the limited license that Summit grants to accredited journalists to use Content from
16 the Website. Beckett has used a vast amount of Summit's copyrighted works and
17 the TWILIGHT Marks to create stand alone products, the Twilight Fanzines, for
18 commercial, not journalistic, purposes. Beckett's extensive use of Summit's
19 copyrighted material in these stand alone products is such that it creates the false
20 impression that Summit endorsed, licensed or sponsored the Twilight Fanzines
21 and/or Beckett.

22 24. Beckett also has edited, altered and/or modified Summit's copyrighted
23 material without Summit's prior written approval. The first Twilight Fanzine
24 includes at least 14 images that have been created by editing, altering, and/or
25 modifying Summit's copyrighted material without Summit's prior written approval,
26 and the second Twilight Fanzine includes at least an additional seven images that
27 have been created by editing, altering, and/or modifying Summit's copyrighted
28 material without Summit's prior written approval. Summit's copyrighted materials

1 have been altered, among other ways, by cropping single images from broader
2 photographs, changing color schemes of photographs, changing the backgrounds
3 appearing behind characters in the photographs, creating collages from single
4 photographs, and superimposing lettering and other designs over the images in the
5 photographs. Examples of such alterations in the first *Twilight* Fanzine appear on
6 the front cover, the back of the front cover, and on pages 1, 10-11, 12-13, 20, 26,
7 28-29, 30, 32, and 53. Examples of such alterations in the second *Twilight* Fanzine
8 appear on the front cover and on pages 12-13, 24-25, 42-43, and 62.

9 25. Beckett has used in the *Twilight* Fanzines copyrighted material owned
10 by Summit, including photographs and other artwork related to the *Twilight* Motion
11 Pictures that are not part of the Content on the Website (also part of the
12 “Photographs”) and therefore were never covered in any way by the limited scope
13 license granted in connection with the Content on the Website. At least eight of the
14 Photographs in first *Twilight* Fanzine and at least five of the Photographs in the
15 second *Twilight* Fanzine are not part of the Content included on the Website and
16 thus were never within the scope of even the limited license granted pursuant to the
17 Terms of Use for the Website.

18 26. Beckett’s actions were willful. Prior to publishing the first *Twilight*
19 Fanzine, Beckett contacted Summit’s licensee for trading cards to find out the
20 identity of the licensor of the *Twilight* property. Beckett was given the contact
21 information for Summit, but did not seek a proper license from Summit before
22 publishing the *Twilight* Fanzines. Beckett then proceeded to copy and post all 72
23 *Twilight* trading cards of Summit in the first *Twilight* Fanzine. Even after
24 notification of Summit’s objection to the first *Twilight* Fanzine, Beckett published
25 and/or distributed the second *Twilight* Fanzine. On information and belief, Beckett
26 intends to publish six more issues of *Twilight* Fanzines despite Summit’s clear
27 objections to the first two *Twilight* Fanzines.

28 27. Summit learned that Beckett is now selling the printing plates for the

1 Twilight Fanzines on eBay and on Defendant's website. On information and belief,
2 Beckett posted the magazine printing plate for the first Twilight Fanzine in October
3 2009, well after Beckett was put on notice of Summit's claims. In early November
4 2009, Summit learned that Beckett was selling the printing plate for the second
5 Twilight Fanzine on eBay, and on Beckett's website. True and correct copies of the
6 eBay listing and the listing on Beckett's website for the printing plates are attached
7 hereto as **Exhibit F**.

8 28. On information and belief, Curtis and Ubiquity are national distributors
9 of magazines. Beckett used Curtis to distribute the Twilight Fanzines and Ubiquity
10 is a sub-distributor of Curtis that was also used to distribute the Twilight Fanzines.

11 29. On information and belief, Curtis and Ubiquity had knowledge of the
12 TWILIGHT Marks and copyrights that are the subject of this action.

13 30. On information and belief, Curtis and Ubiquity knowingly and
14 willfully distributed the Twilight Fanzines without authorization from Summit and
15 Curtis and Ubiquity profited from the infringements alleged herein by distributing
16 the Twilight Fanzines.

FIRST CAUSE OF ACTION

18 **(As to all Defendants)**

19 **(False Designation of Origin – 15 U.S.C. § 1125(a))**

20 31. Summit repeats and realleges each and every allegation of paragraphs 1
21 through 30, above, as though fully set forth herein.

22 32. Defendants' actions as alleged herein constitute a false designation of
23 origin in violation of 15 U.S.C. § 1125(a).

24 33. The use of the TWILIGHT Marks by Defendants constitutes a false
25 designation of origin and a false description or representation that wrongfully and
26 falsely designates the Twilight Fanzines as originating from Summit, or being
27 associated with, licensed by, or authorized by Summit.

28 34. As a direct and proximate result of Defendants' wrongful acts, Summit

1 has suffered and continues to suffer and/or is likely to suffer damage to its
2 trademarks, business reputation, and goodwill. Defendants will continue to use
3 and/or will restart the use of, unless restrained, the TWILIGHT Marks and will
4 cause irreparable damage to Summit. Summit has no adequate remedy at law and is
5 entitled to an injunction restraining Defendants, their officers, agents, and
6 employees, and all persons acting in concert with Defendants, from engaging in
7 further acts of false designation of origin.

8 35. Summit is further entitled to recover from Defendants the actual
9 damages that it sustained and/or is likely to sustain as a result of Defendants'
10 wrongful acts. Summit is presently unable to ascertain the full extent of the
11 monetary damages that it has suffered and/or is likely to sustain by reason of
12 Defendants' acts of false designation of origin.

13 36. Summit is further entitled to recover from Defendants the gains,
14 profits, and advantages that Defendants have obtained as a result of their wrongful
15 acts. Summit is presently unable to ascertain the extent of the gains, profits, and
16 advantages that Defendants have realized by reason of their acts of false
17 designation of origin.

18 37. Because of the willful nature of Defendants' wrongful acts, Summit is
19 entitled to an award of treble damages and increased profits pursuant to 15 U.S.C.
20 § 1117 and destruction of the Twilight Fanzines under 15 U.S.C. § 1118.

21 38. Summit is also entitled to recover its attorneys' fees and costs of suit
22 pursuant to 15 U.S.C. § 1117.

23 **SECOND CAUSE OF ACTION**

24 **(As to all Defendants)**

25 **(Trademark Infringement)**

26 39. Summit repeats and realleges each and every allegation of paragraphs
27 1 through 38, above, as though fully set forth herein.

28 40. Beckett has used in commerce, without Summit's permission, the

1 TWILIGHT Marks in a manner that is likely to cause confusion with respect to the
2 source and origin of the Twilight Fanzines and is likely to cause confusion or
3 mistake and to deceive purchasers as to the affiliation, connection, or association of
4 Summit with Beckett and/or its products.

5 41. On information and belief, Curtis and Ubiquity distributed the Twilight
6 Fanzines without authorization from Summit.

7 42. Defendants' acts constitute infringement of the TWILIGHT Marks in
8 violation of the common law.

9 43. As a direct and proximate result of Defendants' wrongful acts, Summit
10 has suffered and continues to suffer and/or is likely to suffer damage to its
11 trademark, business reputation, and goodwill. Defendants' will continue to use
12 and/or will restart the use of, unless restrained, the TWILIGHT Marks and will
13 cause irreparable damage to Summit. Summit has no adequate remedy at law and is
14 entitled to an injunction restraining Defendants', their officers, agents, and
15 employees, and all persons acting in concert with Defendants, from engaging in
16 further acts of infringement.

17 44. Summit is further entitled to recover from Defendants the actual
18 damages that it sustained and/or is likely to sustain as a result of Defendants'
19 wrongful acts.

20 45. Summit is further entitled to recover from Defendants the gains,
21 profits, and advantages that Defendants have obtained as a result of their wrongful
22 acts.

23 46. Because of the willful nature of Defendants' wrongful acts, Summit is
24 entitled to an award of punitive damages under the common law.

25 **THIRD CAUSE OF ACTION**

26 **(As to all Defendants)**

27 **(Dilution--15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14330)**

28 47. Summit repeats and realleges each and every allegation of paragraphs 1

1 through 46, above, as though fully set forth herein.

2 48. Summit has used the TWILIGHT Marks to identify its products
3 relating to the *Twilight* Motion Pictures before Defendants began promoting and
4 selling the Twilight Fanzines or otherwise used the TWILIGHT Marks. The
5 TWILIGHT Marks are inherently distinctive and have acquired distinction through
6 Summit's extensive, continuous, and exclusive use of the TWILIGHT Marks.

7 49. The TWILIGHT Marks are famous and distinctive within the meaning
8 of 15 U.S.C. §§ 1125(c)(1) and 1127 and Cal. Bus. & Prof. Code § 14330.

9 50. Defendants' use of the TWILIGHT Marks is likely to dilute the
10 distinctive quality of Summit's marks in violation of 15 U.S.C. § 1125(c) and Cal.
11 Bus. & Prof. Code § 14330.

12 51. Defendants' acts complained of herein are likely to damage Summit
13 irreparably. Summit has no adequate remedy at law for such wrongs and injuries.
14 The damage to Summit includes harm to its trademarks, goodwill, and reputation
15 that money cannot compensate. Summit is, therefore, entitled to a preliminary and
16 permanent injunction enjoining Defendants' use of the TWILIGHT Marks in
17 connection with the promotion, advertisement and sale of any goods by Defendants.

18 52. Summit is further entitled to recover from Defendants its actual
19 damages sustained by Summit as a result of Defendants' wrongful acts. Summit is
20 presently unable to ascertain the full extent of the monetary damages it has suffered
21 by reason of Defendants' acts of dilution.

22 53. Summit is further entitled to recover from Defendants the gains,
23 profits, and advantages Defendants have obtained as a result of their wrongful acts.
24 Summit is presently unable to ascertain the extent of the gains, profits and
25 advantages Defendants have realized by reason of Defendants' willful acts of
26 dilution.

27 54. Because of the willful nature of Defendants' actions, Summit is
28 entitled to all remedies available under 15 U.S.C. §§ 1117 and 1118.

FOURTH CAUSE OF ACTION

(As to all Defendants)

(Copyright Infringement)

55. Summit repeats and realleges each and every allegation of paragraphs 1 through 54, above, as though fully set forth herein.

56. The Content, Photographs and Poster Images all are original works of authorship owned by Summit and are copyrightable subject matter under the laws of the United States. The Photographs were fixed in a tangible medium by development of the photographs and/or by uploading to a hard drive and publishing the artwork bearing the Photographs. The Content and Photographs comprise unit photography from the *Twilight* Motion Pictures and publicity photographs and/or artwork for publicity of the *Twilight* Motion Pictures. Poster Image I is a publicity photograph and artwork for *New Moon* and Poster Image II is a unit photograph from *New Moon*. The Contents, Photographs, and Poster Images are the subject of valid and pending copyright applications that have been filed on an expedited basis with the U.S. Copyright Office. Summit will amend its complaint to allege the copyright registrations once they issue.

57. Summit is the copyright owner of the Content, Photographs and Poster Images, and at all times relevant to the complaint, Summit is and has been the sole exclusive authorized licensor of the Content, Photographs and Poster Images in the United States in connection with the issuance of licenses for use of the Content, Photographs and Poster Images.

58. On November 4, 5, and 6, 2009 and June 10, 2010, Summit registered the copyrights and submitted a copyright application in the various works infringed by Beckett and identified in the following copyright registrations and application:

<u>Registration Number</u>	<u>Registration Date</u>
PA-1-649-176	November 4, 2009
PA-1-649-177	November 4, 2009

1	PA-1-649-179	November 4, 2009
2	VA-1-689-425	November 5, 2009
3	VA-1-688-954	November 6, 2009
4	VA-1-688-955	November 6, 2009
5	VA-1-688-958	November 6, 2009
6	VA-1-688-960	November 6, 2009
7	VA-1-688-962	November 6, 2009
8	VA-1-688-963	November 6, 2009
9	VA-1-689-465	November 6, 2009
10	VA-1-689-468	November 6, 2009
11	VA-1-689-472	November 6, 2009
12	VA-1-689-474	November 6, 2009
13	VA-1-689-488	November 6, 2009
14	VA-1-689-491	November 6, 2009
15	VA-1-689-492	November 6, 2009
16	VA-1-689-494	November 6, 2009
17	Service Request/Case No. 1-	June 10, 2010
18	419803272	

19 Such registrations and application are valid and subsisting. True and correct
20 copies of Summit's copyright registrations and application listed above are attached
21 hereto as **Exhibit G**.

22 59. Beckett had access to the Content, Photographs and Poster Images
23 through the Website and through other online resources, and given the wide
24 publication of the Poster Images and the *Twilight* Motion Pictures.

25 60. Beckett has violated Summit's exclusive rights in and to the Content,
26 Photographs and Poster Images by unlawfully using, reproducing, displaying, and
27 distributing them in the *Twilight* Fanzines without authorization and by unlawfully
28

1 preparing derivative works from the Content Beckett accessed on Summit's
2 Website.

3 61. Upon information and belief, Beckett was at all material times aware
4 that its use of the Content, Photographs and Poster Images, in the absence of a valid
5 license agreement authorizing Beckett to use them in a stand alone commercial
6 product and/or to edit, alter and/or otherwise modify them without Summit's prior
7 written approval, would constitute copyright infringement. Summit has not granted
8 to Beckett any such right or license. Beckett's use of the Content, Photographs and
9 Poster Images in the stand alone Twilight Fanzines far exceeds the scope of the
10 limited license that Summit grants to accredited journalists to use Content from its
11 Website "for journalistic purposes" in connection with an article reviewing or
12 commenting on Summit's motion picture(s). Beckett's creation of derivative works
13 from the Content is outside of the limited license and violates the express
14 prohibition in that limited license against editing, altering and/or otherwise
15 modifying the Content without Summit's prior written approval. Finally, Beckett's
16 use of the Photographs that were not part of the Content on the Website is outside
17 of the limited license related to the Website.

18 62. Summit is informed and believes and on that basis alleges that Beckett
19 had full knowledge that its acts are wrongful and unlawful and has continued to
20 infringe said copyright, throughout the United States and various other territories of
21 the world. Beckett continued to sell the first Twilight Fanzine and then offered the
22 second Twilight Fanzine for sale on newsstands and retail outlets after Summit sent
23 to Beckett the first cease and desist letter informing Beckett that its use of the
24 Photographs and Poster Images infringed its copyrights and trademark rights.
25 Beckett's respective infringing acts were and continue to be committed willfully.

26 63. On information and belief, Curtis and Ubiquity distributed the Twilight
27 Fanzines without authorization from Summit.

28 64. By reason of the foregoing, Summit has suffered damages in an

1 amount to be determined at trial, and is entitled, at its election, to either (a) all
2 damages suffered by Summit, along with all gains, profits and advantages derived
3 by Defendants from the acts of infringement, plus exemplary and punitive damages
4 in amounts to be proven at trial, or (b) statutory damages as provided for in the
5 Copyright Act of the United States.

6 65. Summit is also entitled to attorneys' fees under the Copyright Act.

7 **FIFTH CAUSE OF ACTION**

8 **(As to All Defendants)**

9 **(Statutory and Common Law Unfair Competition)**

10 66. Summit repeats and realleges each and every allegation of paragraphs 1
11 through 65, above, as though fully set forth herein.

12 67. By reason of the foregoing, Defendants have been, and are, engaged in
13 "unlawful, unfair or fraudulent business practices" in violation of §§ 17200 *et seq.*
14 of the California Bus. & Prof. Code and acts of unfair competition in violation of
15 the common law.

16 68. Defendants' acts complained of herein have damaged and will
17 continue to damage Summit irreparably. Summit has no adequate remedy at law
18 for these wrongs and injuries. The damage to Summit includes harm to its
19 trademarks, goodwill, and reputation in the marketplace that money cannot
20 compensate. Summit is therefore entitled to: (a) injunctive relief restraining and
21 enjoining Defendants and their agents, servants, employees, and attorneys, and all
22 persons acting thereunder, in concert with, or on their behalf, from using the
23 TWILIGHT Marks, any colorable imitation or variation thereof, or any mark, name,
24 symbol, or logo which is confusingly similar thereto, in connection with the
25 marketing or sale of any goods or services by Defendants ; (b) injunctive relief
26 restraining and enjoining Defendants and their agents, servants, employees, and
27 attorneys, and all persons acting thereunder, in concert with, or on their behalf,
28 from reproducing photographs or other artwork owned by Summit in connection

1 with the marketing or sale of any goods or services by Defendants ; (c) Summit's
2 actual damages sustained as a result of Defendants' wrongful acts; (d) an
3 accounting of Defendants' profits from their sales of any products bearing the
4 TWILIGHT Marks or containing copyrighted photographs or other artwork owned
5 by Summit, or any other goods which make use of the TWILIGHT Marks or
6 photographs or other artwork owned by Summit; (d) the award of Defendants'
7 unjust profits, as well as sums sufficient to compensate Summit for all harm
8 suffered as a result of Defendants' conduct; and (e) punitive damages.

9 **SIXTH CAUSE OF ACTION**

10 **(As to Beckett)**

11 **(Breach of Contract)**

12 69. Summit repeats and realleges each and every allegation of paragraphs
13 1 through 61, above, as though fully set forth herein.

14 70. Summit and Beckett entered into a contract, the terms of which are set
15 out in the <www.summitpublicity.com> Terms of Use (the "Contract").

16 71. Summit performed all, or substantially all, of its significant obligations
17 required under the Contract.

18 72. Beckett failed to comply with the terms of the Contract by exceeding
19 the limited scope of the license granted in the contract. Namely, Beckett: (a) used
20 the Content for purposes other than a journalistic use, (b) edited, altered and/or
21 otherwise modified the Content without Summit's prior written approval; (c) used
22 the Content in such a manner that falsely implies Summit's endorsement or
23 sponsorship of the Twilight Fanzines and/or Beckett; and (d) used the TWILIGHT
24 Marks to create stand alone products to which infringes Summit's trademark rights.

25 73. Summit has been harmed by Summit's failure to comply with the
26 terms of the Contract.

27 74. As a result of Beckett's breach of the Contract, Summit is entitled to
28 equitable remedies, costs and attorneys' fees, in addition to all damages that are

1 provable at trial.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Summit prays that this Court enter judgment against
4 Defendant as follows:

5 1. Finding that Defendants have violated 15 U.S.C. § 1125(a) and the
6 common law, have infringed the TWILIGHT Marks under the common law, have
7 infringed Summit's copyrights under 17 U.S.C. § 501, have violated 15 U.S.C. §
8 1125(c)(1) and Cal. Bus. & Prof. Code § 14330, and have violated Cal. Bus. &
9 Prof. Code § 17200 and the common law by engaging in unlawful, unfair, and
10 fraudulent business practices;

11 2. Ordering that Defendants and their subsidiaries, officers, agents,
12 servants, directors, employees, servants, partners, representative, assigns,
13 successors, related companies, and attorneys and all persons in active concert or
14 participation with Defendants or with any of the foregoing be enjoined
15 preliminarily during the pendency of this action and permanently thereafter from:

16 a. Manufacturing, transporting, promoting, importing,
17 advertising, publicizing, distributing, offering for sale, or selling any goods bearing
18 the TWILIGHT Marks or any other mark, name, symbol, or logo which is likely to
19 cause confusion or to cause mistake or to deceive persons into the erroneous belief
20 that any goods that Defendants caused to enter the stream of commerce are
21 sponsored, licensed, or endorsed by Summit, are authorized by Summit, or are
22 connected or affiliated in some way with Summit or the *Twilight* Motion Pictures;

23 b. Manufacturing, transporting, promoting, importing,
24 advertising, publicizing, distributing, offering for sale, or selling any goods bearing
25 the TWILIGHT Marks or any other mark, name, symbol, or logo that is a copy or
26 colorable imitation of, incorporates, or is confusingly similar to the TWILIGHT
27 Marks;

28 c. Falsely implying Summit's endorsement of Defendants'

1 goods or engaging in any act or series of acts which, either alone or in combination,
2 constitutes unfair methods of competition with Summit and from otherwise
3 interfering with, or injuring the TWILIGHT Marks or the goodwill associated
4 therewith;

5 d. Copying, displaying, featuring, or using the Content,
6 Photographs, Poster Images, or any other copyrightable subject matter from or
7 related to the *Twilight* Motion Pictures, or any works substantially similar thereto,
8 or engaging in any act in violation of Summit's copyrights;

9 e. Engaging in any act which is likely to dilute the
10 distinctive quality of the TWILIGHT Marks and/or injures Summit's business
11 reputation;

12 f. Representing or implying that Defendants are in any way
13 sponsored by, affiliated with, or endorsed or licensed by Summit; or

14 g. Knowingly assisting, inducing, aiding, or abetting any
15 other person or business entity in engaging in or performing any of the activities
16 referred to in paragraphs 2(a) to (f) above.

17 3. Ordering that Summit is the exclusive owner of the TWILIGHT Marks
18 and that such marks are valid;

19 4. Ordering that Summit is the exclusive owner of the copyrights in the
20 Content, Photographs and Poster Images and that such copyrights are valid.

21 5. Ordering that Defendants be required to deliver to Summit for
22 destruction all Twilight Fanzines (including but not limited to all issues of Twilight
23 Fanzines or similar magazines that have been produced even if they have not yet
24 been released), which bear the TWILIGHT Marks or any other trademarks, names,
25 logo, trade dress, or packaging that are confusingly or substantially similar to the
26 TWILIGHT Marks and/or which contain Content, Photographs, Poster Images, or
27 other copyrighted works, the copyrights to which are owned by Summit;

28 6. Finding that Beckett has breached the Contract with Summit;

1 7. Granting an award of damages suffered by Summit according to proof
2 at the time of trial;

3 8. Ordering that Defendants account to Summit for any and all profits
4 earned as a result of Defendants' acts of infringement in violation of Summit's
5 rights under the Lanham Act, the Copyright Act, Cal. Bus. & Prof. Code § 17200,
6 *et seq.*, and the common law;

7 9. Granting an award of three times the amount of compensatory
8 damages and increased profits pursuant to 15 U.S.C. § 1117;

9 10. Granting an award of statutory damages pursuant to 17 U.S.C.
10 § 504(c);

11 11. Granting an award of punitive damages for the willful and wanton
12 nature of Defendants' aforesaid acts;

13 12. For pre-judgment interest on any recovery by Summit;

14 13. Granting an award of Summit's costs, expenses, and reasonable
15 attorney's fees; and

16 14. Granting such other and further relief as is just and proper.

17 Respectfully submitted,

18 MANATT, PHELPS & PHILLIPS, LLP

19
20 Dated: July 7, 2010

By: /s/Jill M. Pietrini

Jill M. Pietrini

Barry E. Mallen

Stuart H. Katz

Attorneys for Plaintiff

SUMMIT ENTERTAINMENT, LLC

JURY DEMAND

Summit demands a trial by jury of all issues triable by jury.

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

Dated: July 7, 2010

By: /s/Jill M. Pietrini

Jill M. Pietrini

Barry E. Mallen

Stuart H. Katz

Attorneys for Plaintiff

SUMMIT ENTERTAINMENT, LLC

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